Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

LEGAL NEWS NOTES AND FACETIÆ

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CASE AND COMMENT

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Common-Law Marriages.

The policy of recognizing as valid a marriage by private contract of the parties without any formal solemnization either by clergyman or magistrate is one which seems to invite perennial discussion. In the state of New York, where such marriages are now held valid, there is an attempt to outlaw them. Opinions on this subject differ widely, and are held tenaciously. The advocates of either policy must in fairness recognize that the advantages are not all on one side. Serious evils may, and will, attend either policy. The question is, By which will they be made least?

When one observes the hardships that result to a man's family by the appearance after his death of one who claims to have been his common law wife it is easy to be impressed with the evils of a situation in which that is possible. Besides this, it is probable that the line of demarcation between lawful marriage and mere concubinage is made somewhat less distinct by the recognition of the validity of a merely consensual marriage. But, on the other hand, it is clear that a law abolishing such marriages, especially in a state where there is no legal punishment for adultery, would permit the maintenance of illicit relations with substantial immunity from any legal penalty. The possible result on public morals of such a situation is serious enough to require the most careful consideration before such a change in the law is made.

Anti-Vice Crusades.

Happy is that community that has no crusades against vice because it has no need of them. Even when there is a painful and crying need the crusade is often so ineffectual as to be disheartening. But when a long-suffering community has borne the disgrace and demoralization of flaunting vice until it seems unendurable, some cyclonic onset seems to be inevitable, notwithstanding the probability that the vice will be little checked, and will almost immediately go on as before. The trouble with crusades is that their force is quickly spent, while the evil is persistently constant. One serious impediment to efficient action of this kind is the inertia of many of the well-disposed people. Much of this is due to their belief that it is useless to try to restrain vice by law. A motion of this kind is propagated by shallow and pretentious utterances about the ineradicability of the "great primal passions," as if their existence necessarily means their uncontrolled lawlessness. Such great primal passions as selfishness, avarice, pride, and ambition often lead to such crimes as theft and murder, but the laws against these crimes seem to have escaped the condemnation of the astute philosophers who think vice cannot be restrained by law because it springs from native passion.

The chief aim of all these crusades is to compel the officials to enforce the law.

Three Kinds of Lawlessness.

The lawlessness of Carrie Nation in smashing Kansas saloons is bred by the lawlessness of the saloon keepers and that of the local officials. Saloon men, for the sake of illegitimate profit, defy the law. The local officials give a tacit consent to the violation of laws which they have solemnly sworn to enforce.

No apology ought to be made for any form of lawlessness. But, if comparisons are to be made between these different classes, Mrs. Nation may not suffer by it. It is true that she resorts to violence, as these other lawless people do not. But no one doubts that, if she violates the law, she does so, not for her own profit, but at a sacrifice of herself for what she deems to be the public good. Her lawlessness is condemned by people who think clearly. But it throws into glaring light the contrasted lawlessness of those who break the laws for their own illicit gain, and the still more shameless lawlessness of those officials who wink at the lawbreaking in disregard of their solemn oaths.

Official lawlessness, not only in Kansas, but in other states, is an insidious evil. The assumption by mayors, chiefs of police, or other local officers of a discretion to enforce or not to enforce a law that they have sworn to execute is a fertile source of demoralization. It makes law uncertain, partial and unjust; it breeds official corruption. To repress lawlessness we need first and most of all officers who will not disregard the law.

Use of Photograph Plates, Dies, or Negatives Made for Other Party.

One employed to cut, engrave, or photograph a die, plate, or negative sometimes assumes the right thereafter to use it for his own purposes. A photographer who has made a negative and printed copies for a customer often makes other copies for himself to exhibit as samples of his skill in his show cases or elsewhere. Sometimes a photographer has been known to make copies for sale to strangers. His right to do this must be determined by the contract under which he made the plate. The difficulty that arises is due to the fact that nearly always this contract has to be determined, in the absence of any express stipulations on the subject, by the merely implied understanding of the parties. A similar situation and similar questions arise in respect to the dies or plates cut or engraved by one person for another. In the recent case of Levyeau *v.* Clements (Mass.) 50 L. R. A. 397, it was held that an engraver who is employed to make dies from photographs, and to print pamphlets containing cuts made from them, has no right to use them in pamphlets for advertising his own business, and, where he does so, and the pamphlets are delivered by mistake to his employer, that the engraver can neither compel their return nor recover any payment for them. The annotation to the case shows that this decision is quite in accord with the other authorities on the subject, and that the general rule is that one who employs another to make a plate or negative has the right to its exclusive use. This seems to be true even when the ownership of the plate belongs to the maker, and when he has the right not only to the possession of the plate, but also to destroy it if he chooses after he has made the copies called for by his contract. But, if he keeps it, he is denied the right to print copies from it for anyone except the person at whose instance it was made. The cases vary somewhat in the statement of the grounds on which they reach this conclusion, but they generally agree that it results from an implied trust or contract, and this is doubtless true.

Foreign Corporations in the Indian Territory.

A reminder of Indian progress is furnished by the act of Congress of February 18, 1901, extending to the Indian territory certain provisions of the laws of Arkansas relating to corporations. The act provides, in § 4, that a foreign corporation shall not begin to carry on business in the territory until it shall have filed a certificate in the office of the clerk of the United States Court of Appeals for the territory designating an agent who resides where that court is held, upon whom service of process may be made, and in § 5 it provides that, if any foreign corporation shall fail to comply with such conditions, "all its contracts with citizens and residents of the Indian territory shall be void as to the corporation." There is room for doubt as to the intent and effect of these provisions. If the language of § 5 were construed alone, out of connection with § 4, and taken literally, it might apply to business of a foreign corporation in the nature of interstate commerce.

The power of Congress over commerce between the Indian territory and other parts of

would permit the maintenance of illicit rela- | compel the officials to enforce the law.

the country is unquestionable. It doubtless might prohibit sales by agents of foreign corporations, even when they were of the nature of interstate commerce. But it is by no means probable that this was intended. The apparent purpose was to extend to the Indian territory the Arkansas laws respecting foreign corporations, and, as the Arkansas laws could not apply to interstate commerce by agents of foreign companies, it can hardly be presumed that Congress intended to prohibit such business in the Indian territory by adopting the Arkansas statute. This obvious conclusion is further strengthened by comparison of the sections. Section 5 is doubtless intended only to furnish the penalty for violating § 4, and this by its terms applies only to a corporation which "shall begin to carry on business" in the territory. The distinction between business carried on in the territory and that which is carried on between that territory and another state or territory is not difficult to apprehend. Therefore, while it may be that Congress could exclude from the territory all agents of foreign corporations, even when their business was interstate in its character, it seems reasonable to conclude that Congress has not done so by this statute.

Some Constitutional Rights in the District of Columbia.

The soundness of the theory advanced in last month's CASE AND COMMENT, that Congress is prohibited by the Fifth Amendment from making arbitrary assessments in the District of Columbia, is contested by a correspondent who, in an article in the Central Law Journal, Vol. 51, page 424, maintains that, as the case of Norwood *v.* Baker, 172 U. S. 269, 43 L. ed. 483, was based on the Fourteenth Amendment, and as that Amendment does not apply to the District of Columbia, the power of Congress to order front-foot assessments in that District is unlimited. (He has two other articles on pages 243 and 460 respectively of the same volume, the former on the unconstitutionality of front-foot assessments, and the latter contending that it is not a state legislative function to determine the amount of special benefits to lands for an assessment.) He contends that, in the absence of an equality clause restricting legislation by Congress, Congress may impose taxes without regard to benefits, and says that "probably the only limitation upon the power of Congress to tax in the District of Columbia and the territories is that the tax shall be for a public use. . . . Congress could, if it would, place the whole burden and cost of running the city of Washington upon the persons and property on one side of Pennsylvania avenue." His argument seems to imply that Congress could impose all the cost of a street improvement, or even the running expenses of the District, upon some single wealthy individual who might reside in the city. It can hardly be doubted, however, that in such extreme instances as these the court would find ample authority for condemning the statute in the provisions of the Fifth Amendment. In the Norwood Case it declares expressly that an assessment for a local improvement in substantial excess of benefits is a taking of property for public use without just compensation. The fact that Congress might call such an assessment a tax would not change its real character, nor even take it out of the express declarations of the opinion in the Norwood Case. But, even if such an arbitrary imposition of a tax were not deemed a taking of property for public use without just compensation, it might, and probably would, be deemed a taking of property without due process of law. The mere arbitrary *dictum* of a legislative body, based on no principle or reason, by which it attempts to take away property or impose a burden, can hardly be regarded as due process of law. Therefore, the provisions of the Fifth Amendment respecting just compensation and due process of law will doubtless be found, if need arises, to be sufficient to furnish a substantial protection against arbitrary exactions under acts of Congress.

Interstate Sales by Agents of Corporations.

The right of a foreign corporation to sell goods by agents seems to be by no means generally understood. It is not uncommon for states to legislate against sales by foreign corporations in terms that are unconstitutional because they constitute restrictions upon interstate commerce. For instance, some state laws, literally construed, would make it unlawful for any agent of a foreign corporation to make a contract in the state, even for the sale of goods, unless the corporation had acquired the right to carry on business in the state by complying with certain statutory provisions. If such sales constitute interstate commerce, these statutes are, of course, as to them inoperative. That such is the case

seems clearly demonstrable from the decisions of the final tribunal on this subject.

The freedom of interstate commerce from state restrictions is not dependent on the character of the parties that engage in it. That foreign corporations, as well as other persons, have a right to engage in interstate commerce without interference by the state into which the commerce is carried is necessarily decided in a large number of cases. In the language of Mr. Justice Lamar in Norfolk & W. R. Co. *v.* Pennsylvania, 136 U. S. 104, 34 L. ed. 392, "it is well settled by numerous decisions of this court that a state cannot, under the guise of a license tax, exclude from its jurisdiction a foreign corporation engaged in interstate commerce, or impose any burdens upon such commerce within its limits." The only question open to consideration in respect to the right of a foreign corporation to make sales by agents within a state is whether or not such sales constitute interstate commerce. If they do, the decisions unquestionably exempt the business from state interference. But this branch of the question is quite as well settled as the other. The drummer cases, such as Robbins *v.* Taxing District of Shelby County, 120 U. S. 489, 30 L. ed. 694, clearly hold that an agent of a nonresident taking orders by sample for goods in another state is engaged in interstate commerce. It seems clear that a sale by sample has no more of the interstate character than a sale made by description or by any other method. And in fact it is said by Mr. Justice Brewer in Brennan *v.* Titusville, 153 U. S. 289, 38 L. ed. 719, in holding that an agent is engaged in interstate commerce when he takes orders for a nonresident manufacturer of picture frames and portraits, that a regulation as to the manner of such sales, "whether by sample or not," is surely a regulation of commerce. The essential thing is that a contract is made between parties of different states for the sale of goods to be shipped from one state into another to complete the contract. Such a sale constitutes interstate commerce, and as to such sales state laws requiring corporations to comply with certain conditions before they can lawfully carry on business cannot have any operation. The right of a foreign corporation to have a place of business, and to carry a stock of goods into the state, is subject to the law of the state. It may be taxed on business of that kind, or excluded altogether. But the right of a foreign corporation to send an agent into the state, and make a contract for the sale therein of a commodity which is then in another state, and is to be shipped into the state to fill the contract, is not subject to any prohibition or regulation by state law. Such a transaction is interstate commerce which is free from state restriction. Therefore, there is no taint of illegality in the contract, and the right of the corporation to sue in the state to collect the purchase price of the sale is undoubted and absolute.

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IN

LAWYERS' REPORTS, ANNOTATED.

Book 50, Parts 3 and 4.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

gress to tax in the District of Columbia and them inoperative. That such is the case

The part containing any note indexed will be sent with CASE AND COMMENT for one year for $1.

Among the New Decisions.

Actions.

An agent having in charge the goods of his principal, who makes a contract with a common carrier to ship them without disclosing his agency, is held, in Carter *v.* Southern R. Co. (Ga.) 50 L. R. A. 354, entitled to maintain an action in his own name for breach of the contract.

Attorneys.

The disbarment of an attorney for wrongful appropriation of moneys to his own use was denied in *Re* Lentz (N. J.) 50 L. R. A. 415, where it was shown that the misappropriation was made without any actual intent to defraud, but with the expectation of paying the money over as soon as required, that the money had been paid over, with interest, before the application for disbarment was made, and that since the misconduct he had conducted himself with integrity, and the court was not able to conclude that he was unworthy of the confidence of clients.

A statute overriding the rules of court respecting admission of attorneys, by requiring the admission of any person who began to study law before a specified date provided he had obtained a diploma from a law school in the state after a specified period of attendance, or passed a satisfactory examination after a prescribed course of study, is held, in *Re* Day (Ill.) 50 L. R. A. 519, to be an unconstitutional assumption by the legislature of power properly belonging to the courts.

A contract by plaintiff in a divorce proceeding to pay her attorney one third of all amounts recovered by him is held, in Newman *v.* Freitas (Cal.) 50 L. R. A. 548, to be illegal and void as against public policy.

Carriers.

A station agent traveling to his home in another town without paying fare, several hours after the duties for the day have ceased, is held, in Louisville & N. R. Co. *v.* Weaver (Ky.) 50 L. R. A. 381, not to assume the risk of injury through negligent operation of the train by reason of the fact that he was an employee of the company.

The duty of a railroad company to inspect its trains is held, in Proud *v.* Philadelphia & R. Ry. (N. J.) 50 L. R. A. 468, not to necessitate a continuous inspection, or to know at each moment the condition of every part of a train; and therefore it is held that the carrier is not liable for the slipping of a passenger on steps upon which filth was frozen, where this condition was not known to the company, and the car had been inspected and found to be in proper condition only a short time before.

Charities.

A bequest of a portion of an estate to trustees to be expended as their best judgment shall dictate in temperance work in a certain city, the greater portion to be used for the benefit of certain temperance organizations, either of which should be entitled to the whole fund if it decided to erect a building for temperance work, and providing that the trustees should expend all of such trust fund within five years, is upheld in Harrington *v.* Pier (Wis.) 50 L. R. A. 307, against the contention that it was void for uncertainty.

Commerce.

The original package of cigarettes which is brought into a state is held, in Austin *v.* State (Tenn.) 50 L. R. A. 478, to be the open basket in which they are brought, where pasteboard boxes, each containing ten cigarettes and separately stamped and labeled, are brought in an open basket belonging to the carrier.

Conflict of Laws.

An assignment for creditors under statutes providing for the debtor's discharge, and binding thereto every creditor who accepts a dividend, is held, in Segnitz *v.* Garden City Banking & T. Co. (Wis.) 50 L. R. A. 327, to be ineffectual to carry title to property of the assignor in another state, since the statute is in effect a bankrupt law which can have no extraterritorial effect.

maintenance of the permanent way; (m) seeking; (h) disposal of stock to other per-

Constitutional Law.

An approval by the governor of a proposed constitutional amendment is held, in Com. *ex rel.* Elkin *v.* Griest (Pa.) 50 L. R. A. 568, not to be required under a constitutional provision that every order, resolution, or vote of the legislature shall be submitted to the governor before it takes effect, where there is an express provision for constitutional amendments that does not provide for any interference by the governor.

A statute providing that the estates of insane persons who have no heirs in the United States dependent upon their estates for support shall be chargeable with the expense incurred by any county for the transportation and maintenance of such insane persons in a hospital for the insane, but not imposing such liability upon the estates of those who have heirs in the United States dependent on such estates for support, is held, in Bon Homme County *v.* Berndt (S. D.) 50 L. R. A. 351, to be constitutional, and not a denial of equal privileges or immunities.

An ordinance requiring a license for the doing of scavenger work, and providing that all persons engaged therein must submit bids, and that the board of health shall decide who are competent bidders, and fixing the time at which closets shall be cleaned, is held, in State *v.* Hill (N. C.) 50 L. R. A. 473, to be void as in derogation of common right, where no necessity is shown therefor, and the effect would be to prohibit property owners themselves from removing the refuse from their own premises.

An act requiring every merchant who sells farm produce on commission to execute a bond in the penal sum of $5,000, conditioned for the faithful performance of his contracts, is held, in People *ex rel.* Valentine *v.* Coolidge (Mich.) 50 L. R. A. 493, to be unconstitutional as class legislation, and also as an unjustifiable interference with the right of citizens to carry on legitimate business.

A statute providing that no person shall engage in the business of guiding in inland fishing or forest hunting without registration and payment of a fee of $1 and receiving a certificate is upheld in State *v.* Snowman (Me.) 50 L. R. A. 544, against the contention that it is a deprivation of the right to engage in a lawful business, since the fish and game belong to the people, who, through their representatives, may permit or prohibit their taking.

Contracts.

An engraver who takes separate contracts to make dies from photographs and print pamphlets containing cuts from them is, in Levyeau *v.* Clements (Mass.) 50 L. R. A. 397, held to have no right to use them in pamphlets for advertising his own business, and where he does so, and the pamphlets are delivered to the employer by mistake, the engraver is denied the right to compel their return or any payment for them.

A contract of subscription to a book entitled "Men of Progress of the State of Maine," whereby a person agrees to furnish his portrait and a sketch of his life for publication therein, and to receive and pay for a copy of the book when issued, is, in the case of Greenleaf *v.* Gerald (Me.) 50 L. R. A. 542, held unenforceable where the agent who solicited the subscription falsely represented that only three other persons in the town would be asked to become subscribers, and that portraits and sketches of only three hundred persons would be published.

Corporations.

Persons who in good faith file the original articles to effect incorporation, instead of an authenticated copy, as required by statute, and who organize as a corporation, are held, in Slocum *v.* Head (Wis.) 50 L. R. A. 324, to have the rights of a corporation as to all persons with whom their dealings are mutually understood to be in that capacity, and not to be liable in such case as partners. As shown by the note in 17 L. R. A. 549, the decisions on this question are in considerable conflict.

Eminent Domain.

Telephone poles and wires are held, in Krueger *v.* Wisconsin Telephone Co. (Wis.) 50 L. R. A. 298, to make an additional burden upon a street, for which compensation must be made to the owners of the land as a condition of such use; and this decision is in accord with the majority of the precedents, as shown by the note in 24 L. R. A. 721.

A bridge approach on a street, the top of which conforms to the surface of the street grade as fixed by the legislature, although it constitutes a structure much higher than the actual surface grade of the street, is held, in Brand *v.* Multnomah County (Or.) 50 L. R. A.

389, not to constitute a taking of private property for which compensation must be made, although under a former decision of the same court it would have been held otherwise if the approach had not been constructed upon the authorized grade of the street.

Evidence.

A communication made by a client to his attorney in the presence of the opposite party to the transaction in question is held, in Stone v. Minter (Ga.) 50 L. R. A. 356, not to constitute a confidential or privileged communication which the attorney will be incompetent to disclose.

Executors and Administrators.

Flowers to the value of $15, ordered by the housekeeper of a deceased person, are held, in O'Reilly v. Kelly (R. I.) 50 L. R. A. 483, to be chargeable to his estate as necessary funeral expenses, where he left no widow or child, and his estate was valued at $6,000.

False Imprisonment.

The wrongful arrest of a person who has committed no offense, and a brutal assault upon him, though made by a policeman who is notoriously incompetent, and who has been retained by the city authorities with knowledge of his incompetency, was held, in McIlhenny v. Wilmington (N. C.) 50 L. R. A. 470, insufficient to render the city liable, either for the tort of the policeman, or for the negligence of the city officials, where there is no statute imposing such liability.

Fences.

An unsightly high-board fence maliciously erected on one's own property in such a way as to obstruct the light, air, and view of a neighbor is held, in Metzger v. Hochrein (Wis.) 50 L. R. A. 305, to be a lawful structure, notwithstanding the malice, and this is in accord with the majority of the decisions, as shown by a note in 40 L. R. A. 177. But a statute making it unlawful to build such structures is shown by such note, and also by the recent case of Karasek v. Peier (Wash.) 50 L. R. A. 345, to be within the power of the legislature.

Fraud.

Mere suppression by a debtor of the fact that negotiations are pending for the sale of the plant of a corporation, shares of stock in which he has pledged as collateral security for his debt, and of the fact that such sale will more than double the value of the stock, is held, in Chicora Fertilizer Co. v. Dunan (Md.) 50 L. R. A. 401, not to constitute a fraudulent concealment which will invalidate a contract by the creditor to release the collateral and abate a portion of the debt in consideration of immediate payment of the balance before maturity.

Highways.

The erection of a water tank in a public street a short distance from a church, and also of a passenger railway station nearby, which causes a disturbance of the congregation by smoke, offensive odors, and cinders, as well as by loud and incessant noises, is held, in Chicago Great Western R. Co. v. First Methodist Episcopal Church (C. C. A. 8th C.) 50 L. R. A. 488, to constitute a private nuisance for which compensation must be made or the nuisance removed.

Husband and Wife.

The release by a married woman of all rights in her husband's property in consideration of a certain payment, upon the making of a deed of separation which has no element of jointure, is held, in Land v. Shipp (Va.) 50 L. R. A. 560, to be utterly void and ineffectual to estop her from claiming dower after the husband's death, as the statute authorizing married women to contract with respect to their separate statutory estate will not extend to their inchoate rights of dower.

Incompetent Persons.

A person who has no delusions, and is more than ordinarily intelligent, with memory unimpaired, and who appreciates exactly the nature of a criminal charge against him, and his relations to the proceeding, and who, so far as mental operations are concerned, is as sane as men are ordinarily, although on account of a serious illness resulting from indulgence in the excessive use of intoxicating drink his brain is affected so as to change his character, whereby he has lost ambition, be-

tives, may permit or prohibit their taking.

Brand v. Multnomah County (Or.) 50 L. R. A.

come aimless and trifling, and has deteriorated in moral character, so that, if at liberty, he will inevitably take to drinking, and when under the influence of intoxicants will be dangerous, is held, in *Re* Buchanan (Cal.) 50 L. R. A. 378, not to be insane within the meaning of statutes providing for the suspension of proceedings against insane criminals, and, if he has been committed to an insane hospital pending the prosecution, he is entitled to be returned to the sheriff for trial.

Insurance.

A woman's right to the proceeds of a policy of insurance on the life of her former husband, when she is named as a beneficiary in the policy, is held, in Overheiser v. Mutual Life Insurance Company (Ohio) 50 L. R. A. 552, to continue, notwithstanding a divorce obtained by her during his life.

A demand for an appraisal is held, in Grand Rapids Fire Ins. Co. v. Finn (Ohio) 50 L. R. A. 555, to be necessary to the enforcement of provisions in a policy of fire insurance requiring an appraisal in the event of disagreement, and making an award, when an appraisal has been required, a condition precedent to an action on the policy.

License.

A statute requiring itinerant vendors to obtain a license before engaging in a temporary or transient sale of goods is upheld, in State v. Foster (R. I.) 50 L. R. A. 339, although the license law is made to some extent a means of revenue.

Master and Servant.

The liability of the employer for the death of a workman in a smelting factory, who fell into a pit, from which the cover had been removed by other workmen during a recess for lunch, is denied in Sofield v. Guggenheim Smelting Co. (N. J.) 50 L. R. A. 417, on the ground that the negligence in failing to replace the covering was the negligence of coservants in the common employment.

Mines.

The location of lode claims within the exterior boundaries of a placer mining claim previously located by other parties is upheld in Mt. Rosa Mining, M. & L. Co. v. Palmer (Colo.) 50 L. R. A. 289, where the lode claims were known to exist before the application for the patent to the placer claim. The authorities on the question of lodes or veins within placer claims are reviewed in a note to this case.

Mortgages.

A chattel mortgage on crops growing upon mortgaged land is held, in Jones v. Adams (Or.) 50 L. R. A. 388, not to constitute a constructive severance which will prevent the crops from passing to a purchaser of the land on foreclosure sale made while the crops are still standing.

Municipal Corporations.

The establishment of a board of police commissioners for the city of Newport, Rhode Island, by a statute, is held, in Newport v. Horton (R. I.) 50 L. R. A. 330, not to be an unconstitutional interference with the right of that city to local self-government so far as the appointment by them of a chief of police is concerned, for the reason that a police officer does not perform a purely municipal, but a state, duty.

An ordinance providing that it shall be unlawful for the proprietor of any saloon or place where intoxicating liquors are sold, his clerks, agents, or employees, to enter such place for any purpose on Sunday without first obtaining a written permission from the mayor or recorder of the town, stating the length of time he may remain in the saloon, is held, in Newbern v. McCann (Tenn.) 50 L. R. A. 476, to be void for unreasonableness, and because it vests an arbitrary discretion in the mayor or recorder.

An ordinance imposing a license tax on persons who lend money on household or kitchen furniture and wearing apparel, when the tax is made so large as to be prohibitory, is held, in Morton v. Macon (Ga.) 50 L. R. A. 485, to be illegal under a charter authorizing license taxes upon professions, trades, or callings, since this does not authorize a prohibitory tax upon any useful and legitimate business.

Negligence.

The negligent piling of lumber by one who has contracted to take it from a car, pile, and

dry it, use a portion of it in making articles, and turn the rest over to the owner of the land for use on portions of the premises remaining in his control, is held, in Wright *v.* Big Rapids Door & B. Mfg. Co. (Mich.) 50 L. R. A. 495, not to render the owner liable for injuries resulting therefrom.

Nuisance.

A statute declaring the emission of thick or dense black or gray smoke from chimneys to be a nuisance *per se*, punishable as an offense, is held, in Moses *v.* United States (D. C. App.) 50 L. R. A. 532, to be within the police power which Congress can exercise over the District of Columbia, and therefore not to constitute a deprivation of property without due process of law.

Osteopathists.

A school of osteopathy which teaches neither surgery, bacteriology, materia medica, nor therapeutics, but relies entirely upon the manipulation of the body for the cure of diseases, is held, in Nelson *v.* State Board of Health (Ky.) 50 L. R. A. 383, not to be a "reputable medical college" whose diploma will entitle a person to practise medicine; but it is also held that the practice of osteopathy is not the practice of medicine within the meaning of the statutes requiring a license therefor.

Parent and Child.

An affidavit in a legal proceeding acknowledging paternity of an illegitimate child is held, in *Re* Rohrer (Wash.) 50 L. R. A. 350, to be sufficient to satisfy a statute providing that such child shall be made an heir by a written acknowledgment signed in the presence of witnesses; and it is held that such writing need not have been made expressly for the purpose of admitting the child to heirship.

Partnership.

A note given by one partner and a comaker to another partner for a loan of the latter's personal funds is held, in Hopkins *v.* Adey (Md.) 50 L. R. A. 498, not to be unenforceable because the money may have been used in paying partnership obligations, especially when there were sufficient partnership assets for that purpose.

Physicians.

See also OSTEOPATHISTS.

A statute requiring a license for the practice of medicine, but exempting commissioned surgeons of the United States army, navy, or marine hospital service, as well as physicians or surgeons in actual consultation from other states, and persons temporarily practising under supervision of an actual medical preceptor, is held, in Schollé *v.* State (Md.) 50 L. R. A. 411, to be constitutional, and not to create any arbitrary, unreasonable, or unjust discrimination, since the reasons for the exemptions are apparent, and are entirely of a public character.

Real Property.

A devise to a woman for her separate use, and, in case she has no issue, to another, when made before the Georgia act of 1854, is held, in Hertz *v.* Abrahams (Ga.) 50 L. R. A. 361, to be a devise limited upon an indefinite failure of issue, which, under the English rules of interpretation, created an estate tail by implication under the statute *de donis;* and therefore the estate of the first taker is held to be enlarged into a fee simple by the Georgia act of December 21, 1821.

Writs.

A foreign life insurance company which has withdrawn from the state and ceased to do business there is held, in Mutual Reserve Fund Life Asso. *v.* Boyer (Kan.) 50 L. R. A. 538, not to be subject to service of process against it upon the superintendent of insurance, who had been designated by the company while doing business in the state as its agent for that purpose under a statute requiring a "written consent, irrevocable," to be given for this purpose.

Recent Articles in Law Journals and Reviews.

"Repudiation of Contracts." II.—14 Harvard Law Review, 421.

"Future Interest in Personal Property."—14 Harvard Law Review, 397.

"Restoration of Whipping as a Punishment."—13 Green Bag, 65.

"John Marshall."—13 Green Bag, 53.

"John Marshall."—63 Albany Law Journal, 7.

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"The Three Present Menaces: The General Issue. The General Verdict. Personal Justice."—40 American Law Register, N. S. 69.

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New Books.

"Digest of the Reports and Session Laws of the State of New York for 1900." Including All the Decisions of the Courts of the State Published during That Period, and a Full Synopsis of All Acts Passed by the Legislature, being the Annual Weekly Digest Revised and Rearranged. Compiled by Willard S. Gibbons, with the approval of the official reporters. (James B. Lyon, Albany, N. Y.) 1901. 1 Vol. $4.50.

This is the seventh annual volume of a series that has become well known to the legal profession. The propositions in it are very concisely and clearly stated. The classification is helpful, though it might well be aided by cross references, but some of these are obviated by duplication of the propositions. It includes a valuable table of cases affirmed and reversed. The volume is in all respects fully equal in excellence to any of its predecessors.

"The Law and Policy of Annexation, with Special Reference to the Philippines, together with Observations on the Status of Cuba." By Carmen F. Randolph. (Longmans, Green & Co., New York.) 1901. 1 Vol. $3.00.

This book makes a strong presentation of the arguments in support of the author's conclusions against the assertion of our sovereignty in the Philippines. But that event, as he explains, is "but the text for a general discussion of annexation with regard to the policies proper for the guidance of the United States in the matter of enlarging their territory, and to the obligations that go with their sovereignty." To the much-vexed and far-reaching questions discussed this book is an important contribution.

"The Law of Torts." By Melville Madison Bigelow. Seventh Ed. (Little, Brown & Co., Boston, Mass.) 1901. 1 Vol. Buckram $3. Sheep $3.50.

This edition is considerably changed from the former ones in arrangement, and contains

very material additions. The book now covers the whole subject of torts. The materials are very closely packed, but so clearly analyzed and tersely stated as to make it one of the handiest of reference books of the law.

"Conflict of Laws, or Private International Law." By Raleigh C. Minor. (Little, Brown & Co.) 1901. 1 Vol. Buckram $3. Sheep $3.50.

Few legal subjects have more difficulties than that of conflict of laws. Naturally enough there is as much conflict in the decisions as there is in the laws they consider. Professor Minor holds that the true theory of the subject is that the conflict of the laws is to be determined by the situs. It is a book that was needed.

"The Law of Suretyship and Guaranty." By Darius H. Pingrey. (Matthew Bender, Albany, N. Y.) 1 Vol. $4.

"Conditional Sales and Bailments." By W. W. Morrill. (Matthew Bender.) 1 Vol. $1.50.

"Bender's Weekly Code Amendments for 1901." (Matthew Bender.) 1 Vol. $1.

"Schouler on Executors and Administrators." 3d Ed. (Boston Book Co., Boston, Mass.) 1 Vol. $5.50.

With "Schouler on Wills." 3d Ed. in 2 Vols. Buckram $8.

"English Reports Reprints. House of Lords. Book 2." (Boston Book Co.) $7.50. To subscribers to full set of Reprints, $6.

"List of Foreign Corporations Entitled to do Business in New York, Showing Place of Incorporation, Date of Certificate of Authority, etc." With All Laws and Forms Relating to Foreign Corporations. (Capital Mercantile Reporting Co., Albany, N. Y.) 1 Vol. $5 with Monthly Addenda, $3 without.

"Schumaker on the Law of Partnership." (Keefe-Davidson Law Book Co., St. Paul, Minn.) 1 Vol. $3.50. Cloth $3.

"Jaggard on Taxation in Minnesota." (Keefe Davidson Law Book Co.) 1 Vol. $7.50.

"Garland's Revised Code of Louisiana." 2d Ed. (F. F. Hansell & Bro., New Orleans, La.) 1 Vol. $15.

"Tax Laws of the United States. "A Synopsis. (Johnson Pub. Co., Council Bluffs, Ia.) 1 Vol. Paper $.35. Cloth $.50.

"Translation of the Law of Civil Procedure for Cuba and Porto Rico, with Annotations, etc." (Lawyers' Co operative Pub. Co., Rochester, N. Y.) 1 Vol. $3.

"Bishop on Statutory Crimes." 3d ed. Thoroughly Revised and Brought Down to Date. By Marion C. Early. (T. H. Flood & Co., Chicago, Ill.) 1 Vol. $6.

The Humorous Side.

THOUGHT THEY MIGHT BE BUNCHED.—A story is told of an Illinois attorney who argued to the court one after another of a series of very weak points, none of which seemed to the court to have any merit, until the court finally said: "MR. ———, do you think there is anything in these points?" to which the attorney answered: "Well, judge, perhaps there isn't much in any one of them alone, but I didn't know but your honor would kind of bunch 'em."

MIGHT MAKE IT ANOTHER FIVE.—A story is also told of an old attorney in southern Illinois during the war times, who, when all the younger lawyers were at the front, was engaged one day by an old planter to draw some affidavits of loyalty by which to obtain the release of cotton that had been seized for confiscation. The old attorney drew the affidavits, and the planter succeeded in getting his cotton, whereupon, with great satisfaction, he told the attorney to meet him on the levee the next morning at nine o'clock and he would pay him. The attorney, who was sadly in need of funds, lay awake all night trying to decide what charge he should make, wondering if $50 would be too much, and if possibly $100 would be willingly paid by the old planter, who had succeeded in getting very valuable cotton by his aid. With feverish head and parched lips the old man went down to the levee at the appointed time and met the planter, not yet able to decide what charge he should make. Without asking him for his bill the old planter said, "Sit down, sah" and as he took out a huge roll of bills, added, "Now, sah, I'll just count out about what I think, sah, would be a fair amount, sah, and then, sah, I'll see what you have to say about it, sah." Then, picking off a $500 bill from the roll, the planter laid it on his knee and added another and another and another until there were five of them, and, looking up, said, "Now, sah, that is about what I thought was right, sah, and what have you to say about it, sah?" The old attorney, bursting with suppressed emotion as he saw the bills laid out, nevertheless struggled to be equal to the occasion. He strove to speak, but did so with difficulty. At last his lips parted and he said with dignity, "Well, I think perhaps you had better make it another five."